

FINDING OF NO SIGNIFICANT IMPACT

For The

NURSERY PRODUCTS LLC ACCESS ROAD ENVIRONMENTAL ASSESSMENT
(Environmental Assessment Number CA-680-EA2009-59)

U.S. Department of the Interior
Bureau of Land Management
Barstow Field Office
Bartow, California
December 2011

FINDING OF NO SIGNIFICANT IMPACT:

It is my determination that a decision to approve Alternative A would not result in significant impacts to the quality of the human environment. Anticipated direct, indirect, and cumulative effects are within the range of impacts addressed by the California Desert Conservation Area Plan and all effects were mitigated below a level of significance. Thus, the project does not constitute a major federal action having a significant effect on the human environment; therefore, an Environmental Impact Statement (EIS) is not necessary and will not be prepared. This conclusion is based on my consideration of CEQ's criteria for significance (40 CFR § 1508.27), regarding the context and intensity of the impacts described in the EA (DOI-BLM-CA-680-2009-0059-EA) and based on my review of the project and its impacts.

Some members of the public requested that BLM prepare an Environmental Impact Statement rather than an Environmental Assessment. BLM decided to continue with the preparation of the Environmental Assessment. After complete review of the potential impacts identified in the Environmental Assessment, and public comment on the Environmental Assessment, the proposed Action Alternative, and comments from other agencies and groups received during coordination and consultation, BLM considered the need for an Environmental Impact Statement.

Based upon review of the Environmental Assessment and supporting project record, I have determined that proposed action is not a major federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR 1508.27. Therefore, an Environmental Impact Statement is not needed. This finding is based on the following discussion:

Context: The entire project area falls within an area of relatively low development. However, the area is not pristine, given its location near major transportation routes, its relative proximity to the former Hawes air field and its adjacency to a former mine site. The area is within critical habitat for the federally listed desert tortoise and within habitat for State-listed Mohave ground squirrel. Both these species are covered under special management actions on public lands, as approved in the West Mojave Plan (2006). In addition, the project area, as with much of San Bernardino County, is within an air basin in federal and State non-attainment for very small particulate matter and ozone, both of which may be impacted by expansion, upgrade, and use of the road. The proposed action globally will reduce regional air impacts by providing a recycling facility closer to the generation sources than any currently available comparable facilities.

The discussion of significance criteria that follows applies to the intended action and is within the context of local importance, due to the relatively limited scope of effects. None of the effects identified including direct, indirect and cumulative effects, are considered significant based on the lack of conflict with existing uses, relatively low special-status species densities, minimal impacts to special-status species and their habitat or to current air quality, when considered along with the mitigation of identified impacts as set forth in the attached EA and BO, and included as stipulations to the proposed action. The EA has also determined that the proposed action

conforms to the California Desert Conservation Area Plan, as amended. The Environmental Assessment details the effects of the project. None of the effects identified including direct, indirect and cumulative effects, are considered to be significant.

Intensity: The following discussion is organized around the Ten Significance Criteria described in 40 CFR 1508.27.

1) Impacts may be both beneficial and adverse.

The proposed action would adversely impact resources as described in the EA. Potential impacts include vegetation removal, soil disturbance, temporary noise and dust due to road construction, and habitat fragmentation. Mitigating measures to reduce adverse impacts to desert tortoises and air quality were identified in the EA, and are incorporated in the decision. Desert tortoise measures also reduce potential for impacts to Mohave Ground squirrel. Mitigation measures include desert tortoise fencing to preclude tortoises from the road, installation of three wildlife under-crossings along the road to facilitate movement of Desert tortoise and to minimize habitat fragmentation, and hardening and maintenance of the road to decrease overall dust emissions from the increased vehicle use of the existing road. Based on the EA analysis, adopted design measures, and additional mitigation measures that are identified in the biological analysis and associated federal Biological Opinion and state-issued ITP, none of the environmental effects discussed in detail in the EA and associated appendices are considered significant.

2) The degree to which the selected alternative will affect public health or safety.

No aspects of the project have been identified as having the potential to significantly and adversely impact public health or safety. As stated above, design and maintenance measures for the road have been incorporated to mitigate potential impacts resultant from noise and dust during road construction or use. Measures to conserve groundwater quality were incorporated into the proposed action. Measures to address traffic concerns were incorporated into the proposed action. The project area is over 1.5 miles from the nearest residence and over eight miles from the nearest community and the proposed access road provides the only viable access to the proposed actions' private property.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

The only aspect of the project that has been identified as having unique characteristics is its location within critical habitat for the desert tortoise and the Mohave Ground Squirrel Conservation Area. The critical habitat areas designated for the desert tortoise are large in extent including literally millions of acres. Habitat characteristics within the area of potential effect have been assessed through survey and a Biological Opinion has determined that the proposed action is not likely to adversely modify the critical habitat of the desert tortoise because the amount of critical habitat that would be lost comprises a small portion of the total amount of critical habitat identified for this species, and the limited habitat loss is more than compensated for, through adopted mitigation measures. This minor loss would not compromise the overall conservation function and value of critical habitat for the desert tortoise. Likewise, numerous acres of public land are managed for the conservation on the

Mohave ground squirrel. This Conservation Area has an allowance of one present surface disturbance. This project, combined with the other ground disturbing projects, is well below the one percent cap. Additionally, the mitigation land for the Desert tortoise will also provide compensation habitat for the Mohave ground squirrel. There are no park lands, prime farm lands, and wild and scenic rivers within the project area.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

No anticipated effects have been identified that are scientifically controversial. As a factor for determining within the meaning of 40 C.F.R. § 1508.27(b)(4) whether or not to prepare a detailed environmental impact statement, "controversy" is not equated with "the existence of opposition to a use." *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). "The term 'highly controversial' refers to instances in which 'a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use.'" *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The project is not unique or unusual; it is the improvement and upgrade of an existing road across federal lands to private property. The environmental effects to the human environment are fully disclosed and analyzed in the EA. There are no predicted effects on the human environment that are considered to be highly uncertain or that involve unique or unknown risks.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The proposed action does not set a precedent for any future actions that may have significant effects, nor does it represent a decision in principle about a future consideration. The upgrade and ROW for the existing road is an isolated action. Any future upgrading of roads would be considered on a case by case basis with its own NEPA compliance. Likewise, any future right of ways for roads would be subject to BLM's receipt of an right of way application, the processing of a specific NEPA document, and issuance of a right of way. There are no existing applications to the BLM for related projects. The development of the recycling facility is on private land and was previously subject to compliance with the state mandated CEQA process with San Bernardino County as the CEQA lead agency. The County has already reached its decision for this matter.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

The EA provided a complete analysis if the cumulative effects for the proposed action in Chapter 4. Analysis of the adjacent private land facility to which the upgraded road would provide access was included in chapter 4 of the EA as a cumulative effect analysis. No significant direct, indirect, or cumulative impacts were identified in the EA.

8) *The degree to which the action may adversely affect the districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.*

Protocol archaeological surveys have been conducted and a cultural report prepared and accepted by the BLM for this project. The project will not adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause loss or destruction of significant scientific, cultural, or historical resources. Chapter 3 of the EA provides information about the cultural resource review for this project.

9) *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.*

This action may affect, but would not adversely affect habitat for listed, proposed, or BLM-sensitive species, based on the EA analysis as well as relevant consultations with wildlife agencies. Mitigation measures identified in chapter 5 of the EA mitigate impacts to the Desert tortoise and its habitat. The proposed action is determined as not likely to adversely modify the habitat or adversely affect the Desert tortoise because of the small amount of habitat affected, compensatory mitigation requirements, and the project design.

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

The project does not violate any federal, state, local or tribal law or requirement imposed for the protection of the environment. The EA and supporting project record contain discussions pertaining to Endangered Species Act, National Historic Preservation Act, Clean Water Act, and Executive Order 12898 (Environmental Justice), and Clean Air Act. With the exception of the Endangered Species Act, the EA concluded that there would be no significant or substantial effect associated with these regulations. With respect to the Endangered Species Act, the proposed action has been developed in coordination with wildlife agencies, including appropriate consultations and the BO and ITP have been issued which address all identified impacts.

Based on the above evaluation, I find that Alternative A, to issue a non-exclusive right of way to Nursery Products LLC, and to improve the road has a FONSI.

Signed:

Roxie C. Trost

Authorized Officer

Field Manager, Barstow Field Office, Roxie C. Trost

1/13/2012

Date